

REMARKS

Applicants respectfully request reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow. Applicants note in the Office Action Summary of the outstanding Office Action, claim 24 has been examined, and therefore applicants understand that claim 24 has been rejoined. In the remarks sections of the outstanding Office Action, however claim 23, a canceled claim, is indicated as being rejoined. Applicants understand this to be a typographical error, which the Examiner meant to read claim 24.

IDS

An IDS was filed on September 20, 2004 disclosing one reference that was cited in a related US application 10/030,226. A copy of this IDS is part of the electronic file wrapper of private PAIR of the present application. The Examiner is respectfully requested to return an initialed copy of the related SB-08 with the next communication.

Claim Rejections – 35 USC § 112, Indefiniteness

The claims have been amended to overcome the rejections of record.

Claim Rejections – 35 USC § 102

Claim 1 stands rejected under 35 U.S.C. 102(a) as being anticipated by NCBI Accession No. AF111168. Applicants urge that they have amended the claims to overcome these rejections. The “protein-coding region” in claim 1(a) has been amended to “positions 58 to 1770.” Claim 1(c) has also been amended to replace “58 to 696” with “136 to 696, which corresponds to the nucleotide sequence that encodes the amino acid sequence from positions 27 to 213 of SEQ ID NO: 2.

Provisional Double Patenting Rejection

Applicants request that the Examiner withdraw the provisional judicially created obviousness-type double patenting rejection over Application No. 10/305,278. With the submission of this response, applicants believe that all outstanding rejections have been

overcome. MPEP § 804 I. B., reproduced below, states that when a provisional obviousness-type double patenting rejection is the only rejection remaining, the Examiner should withdraw the rejection and allow the application to issue as a patent.

The "provisional" double patenting rejection should continue to be made by the examiner in each application as long as there are conflicting claims in more than one application unless that "provisional" double patenting rejection is the only rejection remaining in one of the applications. If the "provisional" double patenting rejection in one application is the only rejection remaining in that application, the examiner should then withdraw that rejection and permit the application to issue as a patent, thereby converting the "provisional" double patenting rejection in the other application(s) into a double patenting rejection at the time the one application issues as a patent.

If the "provisional" double patenting rejections in both applications are the only rejections remaining in those applications, the examiner should then withdraw that rejection in one of the applications (e.g., the application with the earlier filing date) and permit the application to issue as a patent. The examiner should maintain the double patenting rejection in the other application as a "provisional" double patenting rejection which will be converted into a double patenting rejection when the one application issues as a patent.

Conclusion

Applicants believe that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to

Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicants hereby petition for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

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By _____

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